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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,717	11/28/2007	Christoph Herrmann	DE 020254	7786

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P.O. BOX 3001  
BRIARCLIFF MANOR, NY 10510

EXAMINER
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AMIRMOKRI, JALALEDDIN

ART UNIT	PAPER NUMBER
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2617

MAIL DATE	DELIVERY MODE
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10/01/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/533,717	<b>Applicant(s)</b> HERRMANN ET AL.	
	<b>Examiner</b> JALALEDDIN AMIRMOKRI	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/28/07 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Status***

This is in response to application filed on November 28, 2007 in which claims 1-12 are presented for examination.

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim 12** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention in claim 12 is directed to a software program which is not a patent eligible subject matter under 35 U.S.C. 101, which requires the subject matter to be one of the following: process, machine, manufacture, or composition of matter.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For instance in claim 1 limitation "transmitting

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a first number of first data packets of a plurality of first data packets in a first container of a plurality of second containers from the transmitting station to the receiving station” is not clear what is meant by a first container of a plurality of second containers. The aforementioned rejection set forth above applies equally to claims 10-12, which recites substantially the same limitations as claim 1.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-5, 7 and 9-12 are rejected under 35 U.S.C 103(a) as being unpatentable over Malkamaki (US Patent No. 7,310,336) in view of Ouchi (US Patent Application Publication No. 2004/0054788).

**Regarding claims 1 and 10-12**, Malkamaki teaches method of transmitting a plurality of data packets from a transmitting station to a receiving station (as described in column 3, lines 55-59; e.g. a first protocol layer of a sending terminal sends packets as a sequence of data blocks to a peer first protocol layer of a receiving terminal) , the method comprising the step of:

transmitting a first number of first data packets of a plurality of first data packets (as described in column 7, lines 32-34) in a first container (as described in column 5, lines 12-18 and column 5, line 64 to column 6, line 2; e.g. MAC data blocks- and column

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7, lines 32-34; e.g. data block n) of a plurality of second containers from the transmitting station to the receiving station (as described in column 7, lines 32-34; e.g. data block n+32);

wherein the first data packets are data packets of a first connection (as described in column 5, line 58 to column 6, line); and

Malkamaki does not explicitly teach that the first number is one of smaller and equal to a maximum number.

Ouchi teaches that the first number is one of smaller and equal to a maximum number (as described in paragraph [0015], lines 16-17).

Therefore it would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify Malkamaki for the first number to be equal to the maximum number as described by Ouchi in order to offer sufficient communication throughput and hence provide a highly reliable and versatile communication system to the users.

**Regarding claim 3**, Malkamaki teaches a plurality of second data packets is transmitted from the transmitting station to the receiving station (as described in column 3, lines 55-59);

wherein each data packet of the plurality of first and second data packets is provided with connection information, which indicates whether the corresponding data packet is a first data packet or a second data packet (as described in column 5, lines 23-51).

**Regarding claim 4**, Malkamaki teaches that each data packet of the plurality of first and second data packets is an encoded data packet comprising connection information (as described in column 3, line 55 to column 4, line 9; e.g. sequence number); and

wherein the consecutive data packet number of a third data packet of the plurality of first and second data packets is applied to encode the third data packet, resulting in an encoded third data packet comprising connection information (as described in column 7, lines 32-34 and column 3, line 55 to column 4, line 9).

**Regarding claim 5**, Malkamaki teaches that the first container is labelled with a container sequence number (as described in column 3, line 55 to column 4, line 9; e.g. sequence number);

wherein the first container has a first container size (as described in column 7, lines 32-34);

wherein the first container size is influenced by a number of data packets inside the first container (as described in column 7, lines 32-34); and

wherein an error protection of the first container is influenced by the number of data packets inside the first container (official notice is taken that the number of packets in e.g. a PDU influencing the error protection (e.g. CRC or FEC) are well known in the art).

**Regarding claim 7**, Malkamaki teaches that the transmitting station reads the connection information of a fourth data packet of the plurality of first and second data packets (as described in column 7, lines 28-52);

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wherein the transmitting station decides whether the fourth data packet is a first data packet depending on the connection information (as described in column 7, lines 32-34 and column 3, line 55 to column 4, line 9); and

if the fourth data packet is a first data packet the transmitting station adds the first data packet to the first container (as described in column 7, lines 28-52).

Malkamaki does not explicitly teach that the resulting first number is one of smaller and equal to the maximum number.

Ouchi teaches that the resulting first number is one of smaller and equal to the maximum number (as described in paragraph [0015], lines 16-17).

Therefore it would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify Malkamaki for the first number to be equal to the maximum number as described by Ouchi in order to offer sufficient communication throughput and hence provide a highly reliable and versatile communication system to the users.

**Regarding claim 9**, Malkamaki teaches that the method is applied for data transmission over the High Speed Downlink Shared Channel in UMTS (as described in column 1, lines 54-67).

5. Claim 2 is rejected under 35 U.S.C 103(a) as being unpatentable over Malkamaki in view of Ouchi and further in view of Radpour (US Patent Application Publication No. 2004/0068556).

**Regarding claim 2**, Malkamaki teaches that a preset number of first data packets is transmitted from the transmitting station to the receiving station in a second number of second containers (as described in column 7, lines 28-52).

Malkamaki in view of Ouchi does not explicitly teach that the second number is one of bigger and equal to a minimum number.

Radpour teaches that the second number is one of bigger and equal to a minimum number (as described in paragraph [0047], lines 15-18).

Therefore it would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify Malkamaki in view of Ouchi for the second number to be equal to the minimum number as described by Radpour in order to offer sufficient communication throughput and hence provide a highly reliable and versatile communication system to the users.

6. Claims 6 and 8 are rejected under 35 U.S.C 103(a) as being unpatentable over Malkamaki in view of Ouchi and further in view of Tourunen et al. (US Patent Application Publication No. 2002/0097723).

**Regarding claim 6**, Malkamaki in view of Ouchi does not explicitly teach that the transmitting station is configured by a network unit; wherein the network unit determines the maximum number based on channel conditions; wherein the network unit transmits a first signal to the transmitting station; and wherein the first signal comprises information about the maximum number.



Tourunen teaches that the transmitting station is configured by a network unit (as described in paragraph [0037], lines 26-32);

wherein the network unit determines the maximum number based on channel conditions (as described in paragraph [0044]);

wherein the network unit transmits a first signal to the transmitting station (as described in paragraph [0037]); and

wherein the first signal comprises information about the maximum number (as described in paragraph [0044]).

Therefore it would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify Malkamaki in view of Ouchi for a network unit to configure the transmit station and maximum number as described by Tourunen in order to allocate sufficient communication throughput and hence provide a highly reliable and versatile communication system to the users.

**Regarding claim 8**, Malkamaki in view of Ouchi does not explicitly teach that the network unit determines the maximum number and the minimum number based on channel conditions; wherein the network unit transmits a second signal to the transmitting station; wherein the second signal comprises information about the maximum number and the minimum number.

Tourunen teaches that the network unit determines the maximum number and the minimum number based on channel conditions (as described in paragraph [0044]);

wherein the network unit transmits a second signal to the transmitting station (as described in paragraph [0037]);

wherein the second signal comprises information about the maximum number and the minimum number (as described in paragraph [0044]).

Therefore it would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify Malkamaki in view of Ouchi for a network unit to configure the transmit station and maximum number as described by Tourunen in order to allocate sufficient communication throughput and hence provide a highly reliable and versatile communication system to the users.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Lee et al.** (US Patent Application Publication No. 2002/0009999)

discloses data transmission method for hybrid ARQ type II/III downlink of a wide-band radio communication system.

**Forssell et al.** (US Patent Application Publication No. 2002/0105940)

discloses Resource allocation in packet-format communication.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JALALEDDIN AMIRMOKRI whose telephone number is (571)270-5880. The examiner can normally be reached on M-F 8am-5m EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICK EDOUARD can be reached on (571)272-7603. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.A./

09/29/10

/Patrick N. Edouard/

Supervisory Patent Examiner, Art Unit 2617